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October 19, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th St. S.W.
Washington D.C. 20554

Federal Communications Commission
Office of Secretary

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Re: Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of
Local Exchange Carriers, WC Dkt. No. 04-313, CC Dkt. No. 01-338.
Submission of Reply Comments and Compliance with Protective Order

Dear Ms. Dortch:

On behalf of Conversent Communications, LLC we have enclosed for filing, pursuant to the protective order in the above referenced proceedings, two copies of a redacted version the reply comments of Conversent Communications, LLC. The redacted version was also filed electronically in the above referenced dockets.

Confidential versions of the enclosed reply comments have also been sent to Gary Remondino of the Wireline Competition Bureau and were filed separately with the Secretary.

Please let us know if you have any questions.

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**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.**

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OCT 19 2004

In the Matter of

**Federal Communications Commission
Office of Secretary**

Unbundled Access to Network Elements

WC Docket No. 04-313

Review of the Section 251 Unbundling
Obligations of Incumbent Local Exchange
Carriers

CC Docket No. 01-338

REPLY COMMENTS OF CONVERSENT COMMUNICATIONS, LLC

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**ATTORNEYS FOR CONVERSENT
COMMUNICATIONS, LLC**

October 19, 2004

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BEFORE THE
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Unbundled Access to Network Elements)	WC Docket No. 04-313
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Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

REPLY COMMENTS OF CONVERSENT COMMUNICATIONS, LLC

Conversent Communications, LLC ("Conversent") hereby submits its reply comments in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

Conversent is a signatory to and fully supports the comments and reply comments of ALTS *et al.*, filed in this proceeding. Conversent files these reply comments to supplement the record regarding the implications of the various impairment tests for loops and transport proposed in this proceeding. For its analysis, Conversent chose three states in which it operates: Massachusetts, Rhode Island and New Jersey. These states were selected because there is available data for them to permit a comparison of the results yielded by the application of the impairment triggers adopted in the *Triennial Review Order*, and largely upheld by the D.C. Circuit,¹ with the impairment tests proposed by incumbent LECs. Specifically, Conversent compared² the results of the loop

¹ See *United States Telecomm. Ass'n v. FCC*, 359 F.3d 554, 574-5 (D.C. Cir.), *cert. denied*, No. 04-12, 2004 WL 2069543 (Oct. 12, 2004) ("*USTA IP*").

² Conversent is in the process of preparing the backup materials used for this comparison for filing in this docket and will file those materials shortly after filing these reply comments.

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and transport unbundling tests proposed by Bellsouth, SBC and Verizon³ in their comments in this proceeding with the transport routes and loop locations that Verizon alleged in the state implementation proceedings would be removed under the *Triennial Review Order* triggers.

As the New York PSC's comments in this proceeding demonstrate, Verizon substantially overstated the routes and locations that would be eliminated under the *Triennial Review Order* triggers.⁴ Nevertheless, as demonstrated herein, even Verizon's unreliably broad interpretation of the transmission UNEs that would be eliminated under the *Triennial Review Order* triggers would yield far fewer false negatives (incorrect findings of non-impairment) than the tests proposed by the incumbents in their comments.

In fact, the Conversent study demonstrates that the incumbents' proposed tests would remove many more routes and locations than the *Triennial Review Order* triggers. Given that those triggers are consistent with the requirements of Section 251(d)(2), the enormous differential between the results of the *Triennial Review Order* triggers on one

³ SBC's proposal would eliminate all unbundling for loops above DS1 and DS1s unbundling would be eliminated in wire centers with over 15,000 loops. See SBC Comments at 88-89. One prong of Verizon's loop proposal would eliminate all loop unbundling in wire centers where there are 5,000 or more total business lines (retail and wholesale). See Verizon Comments at 82. Bellsouth would eliminate all loop unbundling in central offices with 5,000 or more business access lines. See Bellsouth Comments at 44. Because Qwest's proposes to effectively eliminate all loop unbundling, ALTS believes that such a risible position does not merit serious discussion. See Qwest Comments at 5-7 (asserting that the mere availability of tariffed special access services precludes a finding of impairment). For transport, Bellsouth and Verizon would eliminate unbundling for all wire centers with more than 5,000 business access lines. See Verizon Comments at 82; Bellsouth Comments at 39. SBC would eliminate unbundling between wire centers with more than 10,000 business access lines and between wire centers with more than 10,000 business access lines, and those with more than 5,000 business access lines. See SBC Comments at 69-70.

⁴ See *New York PSC Comments* at ii (showing that while Verizon alleged that there were 4141 routes for which there should have been a finding of non-impairment in New York, the NY PSC determined that only 135 of these routes met any *Triennial Review Order* triggers).

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hand and the incumbents' tests on the other demonstrates that the incumbents grossly understate the scope of actual impairment for transmission facilities.

II. COMPARISON OF *TRIENNIAL REVIEW ORDER* TRIGGERS FOR LOOPS AND TRANSPORT WITH ILEC PROPOSALS

Because the incumbents refuse to make available the number of business access lines served by their wire centers, the only publicly available data that Conversent could obtain regarding business access lines was generated by PNR Associates for purposes of designing the forward-looking high-cost subsidy model for non-rural LECs. The data actually represents estimates of total business lines based on publicly available secondary sources such as Dun & Bradstreet's database of business locations, the LERG, census data, and incumbent LEC wire center boundaries.⁵ The PNR data may understate the number of transport routes and loop locations in each state that would no longer be subject to unbundling, because, as noted above, this data does not include wire centers owned by rural LECs. Nevertheless, Conversent used the PNR data for its study and, where possible, supplemented that data with a limited amount of proprietary data regarding actual access lines per wire center.

Of the three states studied, such proprietary data is only available for New Jersey. Pursuant to the protective order in this proceeding, the New Jersey Ratepayer Advocate submitted actual wire center density data in its comments in this proceeding.⁶ This data shows the actual number of business access lines in most New Jersey wire centers. Forty

⁵ See *Federal-State Board on Universal Service, Forward Looking Mechanism for High-Cost Support for Non-Rural LECs*, Tenth Report and Order, 14 FCC Rcd 20156, ¶ 51 (1999).

⁶ See Comments of New Jersey Division of the Ratepayer Advocate, Declaration of Susan Baldwin, Confidential Attachment, SMB-10 at 1-6.

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of the 203 wire centers that are included on the PNR list for New Jersey are not included in the New Jersey proprietary data because the latter includes only the Newark and Camden MSAs. Moreover, the New Jersey proprietary data only includes the number of *retail* business access lines and therefore likely understates the number of total business access lines. Therefore, any conclusions reached based on this data are likely to be conservative. In any event, for its study Conversent used the proprietary data for those New Jersey wire centers for which was available.

A. Loop Unbundling: Massachusetts

In the Massachusetts *Triennial Review Order* implementation proceeding, Verizon MA claimed that 70 customer locations met either the self-provisioning or wholesale impairment triggers. According to Verizon, there were 15 customer locations that met the DS1 wholesale trigger. With respect to DS3 loops, Verizon stated that 67 customer locations met the self-provisioning trigger, and 12 meet the wholesale trigger. Finally, Verizon claimed that there were 17 customer locations meeting the dark fiber self-provisioning trigger.⁷

Using PNR data for the 266 wire centers in Massachusetts, there would be no unbundling for any of the customer locations served by 86 of those wire centers under the Bellsouth and Verizon tests. Under SBC's test, all DS3 and dark fiber loops in all wire centers would no longer be subject to unbundling, while DS-1 loops would not have to be unbundled in 22 wire centers. These results of the incumbents' proposed tests would

⁷ See Verizon Massachusetts, Supplemental Testimony of John Conroy and John White, D.T.E. 03-60 at 17 (Dec. 19, 2003) ("*VZ MA Testimony*").

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obviously result in many more UNE loops being eliminated than was the case under the *Triennial Review Order* triggers.

B. Loop Unbundling: Rhode Island

Verizon did not place into the record a loops case in Rhode Island. Using PNR data, of the 30 wire centers in Rhode Island, there would be no unbundling for any location in 12 wire centers under Verizon and Bellsouth's 5,000 business access line test, and under SBC's test, there would be no unbundling for DS3 and dark fiber in any wire center and no unbundling of DS1 loops in 2 wire centers under SBC's 15,000 business access line test for DS1 loops.

C. Loop Unbundling: New Jersey

Verizon argued in the New Jersey *Triennial Review Order* unbundling proceeding that 41 customer locations met either the wholesale or self-provisioning triggers for loops in New Jersey. Specifically, according to Verizon there were 4 customer locations that met the DS-1 wholesale trigger. With respect to DS-3 loops, 4 customer locations met the self-provisioning trigger, and 4 met the wholesale trigger. Finally, Verizon argued that there were 41 customer locations meeting the dark fiber self-provisioning trigger.⁸

Using PNR data, of the 203 wire centers in New Jersey, there would be no unbundling of any loops for any customer in 126 wire centers under Verizon and Bellsouth's 5,000 business access line test. Under SBC's test, there would be no unbundling of DS3 or dark fiber loops and no unbundling of DS1 loops in 62 wire centers under SBC's 15,000 business access line test for DS1 loops.

⁸ See Verizon NJ Inc., Supplemental Testimony of Harold E. West III and John White on Behalf of Verizon New Jersey Inc., Docket No. TO03090705 at 25 (Jan 16, 2004) ("*VZ NJ Testimony*").

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Using only the proprietary retail business access per wire center data covering 163 New Jersey wire centers, there would be no loop unbundling in [proprietary begin] xxx[proprietary end] wire centers under Verizon and Bellsouth's 5,000 business access line test. Under SBC's test, there would be no unbundling of DS3 or dark fiber loops in any location and no unbundling of DS1 loops in [proprietary begin] xxx [proprietary end] wire centers under SBC's 15,000 business access line test for DS1 loops. As noted above, because the proprietary data does not include wholesale business access lines, that data likely understates the number of wire centers that will be taken off of the loop unbundling list.

D. Methodology for Transport Analysis

To determine the total number of possible transport routes in each state that would no longer be subject to unbundling under the RBOC tests, we performed a number of algebraic calculations.⁹ For example, using the PNR data, there were 86 wire centers in Massachusetts with more than 5,000 business access lines. Therefore, 86 was used for N to determine how many routes would no longer be subject to unbundling under the Verizon and Bellsouth tests. This calculation was slightly altered for SBC to take into account its two part test.¹⁰

⁹ Where N is the total number of wire centers meeting each carrier's test and K is two (two being the number of wire centers required for a direct transport route), the following formula yields the number of transport routes in each state:

$${}^nC_k = \frac{n!}{(n-k)! k!}$$

¹⁰ To determine the number of wire center routes that would meet SBC's test, Conversent performed the following calculation where N₁ is the number of wire centers with greater than 10,000 business access lines and N₂ is the number of wire centers between 5,000 and 10,000 business access lines:

E. Transport Unbundling: Massachusetts

Under the *Triennial Review Order* triggers, Verizon claimed that 194 routes met one or both of the FCC's triggers for DS1, DS3 and dark fiber transport in Massachusetts. *See VA MA Testimony* at 6. According to Verizon, there were 186 routes that met one or both of the FCC's triggers for dark fiber transport, 182 routes that met the self-provisioning trigger for dark fiber and 57 routes that met the wholesale trigger for dark fiber. Verizon asserted further that there were, 145 routes that met the self-provisioning trigger for DS3 and 174 routes that met the wholesale trigger for DS1 and DS3 transport. 185 routes met either the self-provisioning trigger for DS1 and DS3 transport. *See id.* at 9-11.

According to the PNR data, there are 266 wire centers in Massachusetts. Under the Bellsouth and Verizon tests, 3655 routes would no longer be subject to unbundling for any type of transport. Under SBC's test, 2914 unique routes would be taken off the unbundling list for any type of transport.

F. Transport Unbundling: Rhode Island

Under the *Triennial Review Order* triggers, Verizon claimed that in Rhode Island, 25 routes met one or both of the FCC's wholesale or self-provisioning triggers for dark fiber transport, eight routes met one or both of the FCC's triggers for DS3 transport and 5 routes met the FCC's wholesale trigger for DS1 transport.¹¹

(continued)

$${}^nC_k = \frac{n!}{(n-k)!k!} + n_1 * n_2$$

¹¹ *See* Verizon Rhode Island, Direct Panel Testimony of Verizon Rhode Island, Theresa L. O'Brien and John White, Docket No. 3550 at 44 (Dec. 8, 2003).

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According to the PNR data, there are 30 wire centers in Rhode Island. Under the Bellsouth and Verizon tests, 66 routes would no longer be subject to unbundling for any type of transport. Under SBC's test, 60 routes would be removed from the unbundling list for any type of transport.

G. Transport Unbundling: New Jersey

Under the *Triennial Review Order* triggers, Verizon claimed that, in New Jersey, 182 routes met the self-provisioning trigger for dark fiber and 572 met the wholesale trigger for dark fiber. *VZ NJ Testimony* at 7-8. Verizon claimed that there were also 572 routes that met the FCC's wholesale trigger for DS1s and DS3s transport respectively, (*see id.* at 8) and 182 routes met the self-provisioning trigger for DS3 level capacity. *See id.* at 7-8.

According to the PNR data, there are 203 wire centers in New Jersey. Under the Bellsouth and Verizon tests, 7875 routes would no longer be subject to unbundling for any type of transport. Under SBC's test, 7095 routes would be removed from the unbundling list for any type of transport.

Using the proprietary data for the 163 wire centers for which the New Jersey Ratepayer Advocate provided data, [proprietary begin] xxx [proprietary end] routes would no longer be subject to unbundling under Verizon and Bellsouth's tests for any type of transport. Under SBC's test, [proprietary begin] xxx [proprietary end] routes would be taken off the unbundling list for any type of transport.

III. CONCLUSION

It is clear from the simple study described herein that the incumbents' proposed impairment tests for loops and transport go far, far beyond anything contemplated by the

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Commission as a fair reading of the impairment test in the *Triennial Review Order*.

Given the fundamental soundness of the impairment triggers adopted in that order, the Commission must reject the incumbents' proposals as grossly unreliable measures of impairment. The Commission should therefore adopt the impairment triggers proposed in the ALTS comments in this proceeding.

_____/s/_____
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October 19, 2004